

## **§ 760.103**

(1) Correct, or require a county FSA committee to correct, any action taken by such county FSA committee that is not in accordance with the regulations of this part or

(2) Require a county FSA committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county FSA committee will preclude the Administrator, the Deputy Administrator for Farm Programs, or a designee or other such person, from determining any question arising under the programs of this part, or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Deputy Administrator for Farm Programs may authorize State and county FSA committees to waive or modify non-statutory deadlines, or other program requirements of this part in cases where lateness or failure to meet such requirements does not adversely affect operation of the programs in this part. Participants have no right to seek an exception under this provision. The Deputy Administrator's refusal to consider cases or circumstances or decision not to exercise this discretionary authority under this provision will not be considered an adverse decision and is not appealable.

## **§ 760.103 Eligible producer.**

(a) In general, the term "eligible producer" means, in addition to other requirements as may apply, an individual or entity described in paragraph (b) of this section that, as determined by the Secretary, assumes the production and market risks associated with the agricultural production of crops or livestock on a farm either as the owner of the farm, when there is no contract grower, or a contract grower of the livestock when there is a contract grower.

(b) To be eligible for benefits, an individual or entity must be a:

(1) Citizen of the United States;

(2) Resident alien; for purposes of this part, resident alien means "lawful alien" as defined in 7 CFR part 1400;

(3) Partnership of citizens of the United States; or

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(4) Corporation, limited liability corporation, or other farm organizational structure organized under State law.

## **§ 760.104 Risk management purchase requirements.**

(a) To be eligible for program payments under:

(1) ELAP, SURE, and TAP, eligible producers for any commodity at any location for which the producer seeks benefits must have for every commodity on every farm in which the producer has an interest for the relevant program year:

(i) In the case of an "insurable commodity," (which for this part means a commodity for which the Deputy Administrator determines catastrophic coverage is available from the USDA Risk Management Agency (RMA)) obtained catastrophic coverage or better under a policy or plan of insurance administered by RMA under the Federal Crop Insurance Act (FCIA) (7 U.S.C. 1501-1524), except that this obligation will not include crop insurance pilot programs so designated by RMA or to forage crops intended for grazing, and

(ii) In the case of a "noninsurable commodity," (which is any commodity for which, as to the particular production in question, is not an "insurable commodity," but for which coverage is available under the Noninsured Crop Disaster Assistance Program (NAP) operated under 7 CFR part 1437), have obtained NAP coverage by filing the proper paperwork and fee within the relevant deadlines, except that this requirement will not include forage on grazing land.

(2) LFP, with respect to those grazing lands incurring losses for which assistance is being requested, eligible livestock producers must have:

(i) Obtained a policy or plan of insurance for the forage crop under FCIA, or

(ii) Filed the required paperwork and paid the administrative fee by the applicable State filing deadline for NAP coverage for that grazing land.

(b) Producers who did not purchase a policy or plan of insurance administered by RMA in accordance with FCIA (7 U.S.C. 1501-1524), or NAP coverage for their applicable crops, will not be eligible for assistance under ELAP, LFP, SURE, and TAP, as provided in

paragraph (a) of this section unless the producer is one of the classes of farmers for which an exemption under § 760.107 apply, is exempt under the “buy-in” provisions of this subpart, or is granted relief from that requirement by the Deputy Administrator under some other provision of this part.

(c) Producers who have obtained insurance by a written agreement as specified in § 400.652(d) of this title even though that production would not normally be considered an “insurable commodity” under the rules of this subpart, will be considered to have met the risk management purchase requirement of this subpart with respect to such production. The commodity to which the agreement applies will be considered for purposes of this subpart to be an “insurable commodity.”

(d) Producers by an administrative process who were granted NAP coverage for the relevant period as a form of relief in an administrative proceeding, or who were awarded NAP coverage for the relevant period through an appeal through the National Appeals Division (NAD), will be considered as having met the NAP eligibility criteria of this section for that crop as long as the applicable NAP service fee has been paid.

(e) The risk management purchase requirement for programs specified under this part will be determined based on the initial intended use of a crop at the time a policy or plan of insurance or NAP coverage was purchased and as reported on the acreage report.

[74 FR 31571, July 2, 2009, as amended at 74 FR 46673, Sept. 11, 2009]

#### **§ 760.105 Waiver for certain crop years; buy-in.**

(a) For the 2008 crop year, the insurance or NAP purchase requirements of § 760.104 (this is referred to as the “purchase” requirement) will be waived for eligible producers for losses during the 2008 crop year if the eligible producer paid a fee (buy-in fee) equal to the applicable NAP service fee or catastrophic risk protection plan fee to the Secretary by September 16, 2008. Payment of a buy-in fee under this section is for the sole purpose of becoming eligible for participation in ELAP, LFP,

SURE, and TAP. Payment of a buy-in fee does not provide any actual insurance or NAP coverage or assistance.

(b) For the 2009 crop year, the purchase requirement will be waived for purchases where the closing date for coverage occurred prior to August 14, 2008, so long as the buy-in fee set by the Secretary of Agriculture was paid by January 12, 2009.

(c) Any producer of 2008 commodities who is otherwise ineligible because of the purchase requirement and who did not meet the conditions of paragraph (a) of this section may still be covered for ELAP, SURE, or TAP assistance if the producer paid the applicable fee described in paragraph (d) of this section no later than May 18, 2009, provided that in the case of each:

(1) Insurable commodity, excluding grazing land, the eligible producers on the farm agree to obtain a policy or plan of insurance under FCIA (7 U.S.C. 1501–1524), excluding a crop insurance pilot program under that subtitle, for the next insurance year for which crop insurance is available to the eligible producers on the farm at a level of coverage equal to 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage, and

(2) Noninsurable commodity, the eligible producers on the farm must agree to file the required paperwork, and pay the administrative fee by the applicable State filing deadline, for NAP for the next year for which a policy is available.

(d) For producers seeking eligibility under paragraph (c) of this section, the applicable buy-in fee for the 2008 crop year was the catastrophic risk protection plan fee or the applicable NAP service fee in effect prior to NAP service fee adjustments specified in the 2008 Farm Bill.

#### **§ 760.106 Equitable relief.**

(a) The Secretary may provide equitable relief on a case-by-case basis for the purchase requirement to eligible participants that:

(1) Are otherwise ineligible or provide evidence, satisfactory to FSA,